



8011-01P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84411; File No. SR-NYSE-2018-47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fees for Routing Orders in UTP Securities Priced Below \$1.00

October 11, 2018

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 1, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to amend the fees for routing orders in UTP Securities priced below \$1.00. The Exchange proposes to implement these changes to its Price List effective October 1, 2018. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to amend the fees for routing orders in UTP Securities priced below \$1.00.

The Exchange proposes to implement these changes to its Price List effective October 1, 2018.

Currently, for executions in securities with a price below \$1.00 that route to and execute on an Away Market,⁴ the Exchange charges a fee of 0.30% of the total dollar value of the transaction for executions in an Away Market auction as well as all other executions.

The Exchange proposes to amend this fee to charge \$0.0005 per share execution in an NYSE American auction, \$0.0010 per share execution in an Away Market auction at venues other than NYSE American, and 0.30% of total dollar value of the transaction for all other executions.

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⁴ The term "Away Market" is defined in Rule 1.1(ff) to mean any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the Exchange maintains an electronic linkage, and (2) that provides instantaneous responses to orders routed from the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that its proposed routing fees of \$0.0005 per share for NYSE American and \$0.0010 per share for venues other than NYSE American for securities with a price under \$1.00 are reasonable, equitable and not an unfairly discriminatory allocation of fees because the fees would be applicable to all member organizations in an equivalent manner. Moreover, the proposed fees for routing shares are also reasonable, equitable and not unfairly discriminatory because the proposal would align routing fees with fees for away market auctions. For example, NYSE American charges \$0.0005 per share for executions at the open and close for securities below \$1.00⁷ and BZX charges 0.00100 per share for closing auctions in BZX listed securities.⁸ Further, the proposal to charge a fee of 0.30% of total dollar value for

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

⁷ See https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.

⁸ See https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

transactions for all other executions in securities with a price under \$1.00 is reasonable, equitable and not unfairly discriminatory because it is consistent with fees charged on other exchanges.⁹

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain

⁹ NASDAQ, for example, charges a fee of 0.30% (i.e. 30 basis points) of total dollar volume to remove liquidity for shares executed below \$1.00. See NASDAQ Fee Schedule at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁰ 15 U.S.C. 78f(b)(8).

competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-47 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2018-47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2018-47 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,

Assistant Secretary.

¹⁴ 17 CFR 200.30-3(a)(12).

